IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5854 OF 2006

Ashok Lalwani and others ..Petitioners
v/s.
State of Maharashtra and others .. Respondents

Mr. G.S. Godbole and Mr. S.S. Kanetkar for the petitioners.
Ms. M.P. Thakur, Assistant Government Pleader for the respondent Nos.1 to 3.
Mr. R.G. Ketkar for the respondent No.4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.

DATED : 20TH MARCH, 2007

P.C.

Rule. Heard forthwith.

2. The petitioners are the owners of various plots in land bearing survey Nos.67 to 73, Mouje Parvati, Taluka Pune, District Pune. As far back as 1961, notification under section 4 of the Land Acquisition Act was issued for the purpose of construction of Mukta Right Bank Canal. No steps, it appears, were taken thereafter. In 1982, another notification was issued under section 4 of the Land Acquisition Act for the public purpose for the development of forest park. It appears also that the proceedings were abandoned. In 1987 in the draft development plan published for the Pune city, the lands were shown as Hill Top Hill Slop Zone. On 27.12.2004, the petitioners were served with the notices and were called upon to file the objections. On 15.1.2005, the petitioners replied to the

notice pointing out that the land admeasuring 1000 hectors of Forest Department is being taken by the Pune Municipal Corporation and in such a situation, the adjoining land of the petitioners should not be acquired. It is also contended that the Pune Municipal Corporation (PMC) did not have enough funds to take proper care of the public parks and also lands reserved for the proposed parks. An enquiry was conducted under section 5(a) of the Land Acquisition Act subsequent to the filing of the objections and the enquiry being conducted but declaration under section 6 of the Land Acquisition Act was issued on 26.12.2005. Subsequent to that, notices have been served on the petitioners under section 9 (3)(4) of the Land Acquisition Act

3. It is the case of the petitioners that on 16.3.2006, they submitted an application under Right to Information Act requesting information in respect of the said lands. From the information received, it was learnt that initially, the lands were reserved for Goods Yard, Ring Railway, Hill Top Hill Slope Zone in the draft development plan. In the development plan sanctioned by PMC in 1991, the lands were shown as Hill Top Hill Slope Zone. The petitioners also sought copy of the enquiry report under section 5 (1) of the Land Acquisition Act which was not made available to them. It is the case of the petitioners that the objections were not properly considered.

4. At the hearing of the petition, on behalf of the petitioners, their learned counsel has principally contended that the land is sought to be acquired for the PMC which is the Planning Authority for Pune City. In the case of the petitioners' lands, they were not reserved for any public purpose in the draft development plan published in 1982 or the final development plan published in 1987.

While preparing the development plan, PMC has taken into consideration what is set out in section 22 of the MRTP Act. The acquisition, therefore, by PMC for development of forest garden when it is not reserved for a public purpose in the D.P. Plan cannot be deemed to be land acquired for public purpose for the Planning Authority. It is submitted that the lands of the petitioners were not reserved for forest garden. It would be clear that the Planning Authority had applied its mind that the land is not required for the public purpose. It is, therefore, submitted that the declaration under section 6 ought to be quashed.

5. Reply has been filed by Prakash Ramchandra Thakur, Special Land Acquisition Officer. It is set out therein that the PMC had proposed to acquire the lands of survey Nos.67 to 73 of Panchgaon Parvati, Pune for Van Udyan (forest). Based on this request and on completing the formalities, the notification was issued under section 4 of the Land Acquisition Act. Objections filed by the petitioners were considered and the enquiry conducted. Subsequently, the declaration has been issued under section 6. The PMC had already deposited an amount of Rs.5 crores as an advance to the office of SLAO for the purpose of acquisition. It is denied that the objections filed were not considered. The acquisition as set out was for a larger public interest and to improve the quality of environment of Pune City. According to the sanctioned plan of Pune City, the lands are shown in the Hill Top Hill Slope Zone. The Assistant Director of Town Planning, Pune has held that the Van Udyan is permissible in the Hill Top Hill Slope Zone. For all the aforesaid reasons, it is submitted that the petition should be dismissed.

6. We have heard learned counsel. In the opinion, the mere

fact that earlier the land was sought to be acquired but acquisition abandoned would be irrelevant for the purpose of considering the declaration issued under section 6 of the Land Acquisition Act. The main contention as urged on behalf of the petitioners is considering section 22 of the MRTP Act which has taken into consideration all aspects before a development plan is notified, failure to reserve the petitioners' land for a public purpose would indicate that the petitioners' lands are not required for public purpose. Secondly, once the lands are not shown for a public purpose or D.P. Plan, it is not open to the respondents to acquire the land for a public purpose which, in this case, is for the forest guard.

7. The argument, we may say so, is disingenuous. The question is whether in a case the land is not reserved for a public purpose, the respondents are prohibited from acquiring such land for a public purpose. In the affidavit of SLAO, it is shown that the lands have been identified as Hill Top Hill Slope Zone. To accept that argument would mean that the respondent State cannot exercise its power of eminent domain if the land is not shown as reserved for public purpose. Considering the definition of the expression “Public Purpose” under the Land Acquisition Act, acquisition for the forest park would fall within the definition. The issue of acquiring land if it is not provided for by reservation in the development plan, in our opinion, is concluded by the judgment of the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others, (2003)2 SCC 111. In that case, the Supreme Court held on an examination of the Act that the reservation had lapsed. In other words, in terms of the development plan, there was no reservation. The question was whether the land could be acquired for the public purpose. The Supreme Court answered the

issue as under:-

> "There is another aspect of the matter which cannot be lost sight of. Despite statutory lapse of designation of the land, the State is not denuded of its power of eminent domain under the general law, namely, the Land Acquisition Act in the event an exigency arises therefor."

8. It would be clear, therefore, that even if a plot is not reserved under the development plan if an exigency arises, the power of eminent domain can be exercised. This has been so exercised. The acquisition is for the forest garden. The objective being to improve the environment of Pune City. It is, therefore, impossible to hold that what was not open to the respondents to acquire the land for the public purpose for which it has been acquired.

9. The only major contention raised, in our opinion, is devoid of merits. In the light of that, this petition will have to be dismissed. Consequently, rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)